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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/518,661	07/05/2005	Edgar Ivo Maria van der Heijden	903-125 PCT/US	7862
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HOFFMANN & BARON, LLP 6900 JERICHO TURNPIKE SYOSSET, NY 11791				CHOI, HYEA JUNG
ART UNIT		PAPER NUMBER		
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/518,661	VAN DER HEIJDEN, EDGAR IVO MARIA
	<b>Examiner</b>	<b>Art Unit</b>
	HYEA J. CHOI	3754

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 05 July 2005.
- 2a) This action is **FINAL**.                                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 56-105 is/are pending in the application.
- 4a) Of the above claim(s) 82-105 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 56-81 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) 56-105 are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 17 December 2004 is/are: a) accepted or b) objected to by the Examiner. Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a). Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____ .
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date <u>05 July 2005</u>	5) <input type="checkbox"/> Notice of Informal Patent Application
	6) <input type="checkbox"/> Other: _____ .

## DETAILED ACTION

### ***Election/Restrictions***

1. Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

Group I, claims 56-81, drawn to apparatus and method of dispensing characterized in that a pump assembly and a reservoir assembly are separate assemblies which can be coupled to one another.

Group II, claim(s) 82-105, drawn to apparatus and method of dispensing characterized in that the pump assembly comprises one or more exchangeable pump elements.

2. The inventions listed as Groups I and II do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons. The special technical feature of Group I is that in the uncoupled state each reservoir can be filled through the outlet of the reservoir, after which the pump assembly and the reservoir assembly are coupled to one another. The special technical feature of Group II is that the operative volume of the pump chamber of the first and/or second pump can be

adjusted by selection of one or more suitable exchangeable pump elements and fitting of these elements in the pump assembly.

3. During a telephone conversation with Gordon Belcher on Tuesday, February 12, 2008, a provisional election was made with traverse to prosecute the invention of the apparatus and method of Group 1, claims 56-81. Affirmation of this election must be made by applicant in replying to this Office action. Claims 82-105 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

4. Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species or invention to be examined even though the requirement may be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

The election of an invention or species may be made with or without traverse. To preserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse.

### ***Drawings***

5. The drawing shown on Figure 6 is objected to because the reservoir assembly is numbered as "2" and should be --3--; in Figure 2, the pump assembly is correctly numbered as "2."

6. The drawings are also objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the decreasing

and increasing cross-sectional area of the first and second piston chambers and the filling unit must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance. Applicant is warned about the insertion of new matter.

***Specification***

7. The disclosure is objected to because of the following informalities: in line 8, page 13, the reservoir assembly is referred to as "2" and should be --3--; in lines 9-10,

page 13, the pump assembly is referred to correctly as "2." Also, in line 5, page 18, the two reservoirs are labeled as "310", instead of as --103--.

Appropriate correction is required.

8. The disclosure is also objected to because references are made to cancelled claims, e.g. reference to claim 1 on page 1 of the specification.

***Claim Rejections - 35 USC § 112***

9. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

10. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

11. Claims 56-81 are rejected under 35 U.S.C. 112, first paragraph, as failing to enable a person skilled in the art. Line 3 of claim 56 speaks of two operating means. However, the specification and drawings only show one operating means (referred to as either 6 or 108).

12. Claims 56, 70, and 74-81 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 56 is vague and indefinite because of the use of the words "can be." Accordingly, it is unclear as to whether it is or isn't.

Claim 70 is vague and indefinite because of the use of the word "designed." The word is non-specific. Everything is designed for some purpose.

Claim 74 is vague and indefinite because there is no proper antecedent basis for "the connecting element". It appears that claim 74 should depend from claim 71 and has been treated by the examiner as depending from claim 71. Appropriate correction is required.

Claim 75 is vague and indefinite because the "Reservoir assembly" is a double inclusion of the "reservoir assembly" recited in claim 56. Claim 75 is vague and indefinite also because "a dispensing unit" is a double inclusion of the "Dispensing unit" recited in claim 56.

Claims 76-81 are vague and indefinite because they appear to be crossing mutually exclusive, independent inventions. Note, the claims from which they depend are directed to a "dispenser," whereas claims 76-81 are directed to a "filling unit." Accordingly, it is unclear as to what the invention is or what invention is being claimed.

Claim 81 is vague and indefinite because it is directed to a "Filling unit" and depends from claim 79. Claim 79 is directed to a "Method". It appears that claim 81 should be dependent upon claim 80.

In light of the above informalities, the claims have been examined as could best be understood by the examiner. The examiner's failure to apply prior art to any of the claims should not be construed as an indication of allowable subject matter.

***Claim Rejections - 35 USC § 102***

13. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

14. Claims 56, 58-59, 67-70, and 75 are rejected under U.S.C. 102(b) as being anticipated by US Patent No. 5,823,394 to Davis et al. (Davis). Davis discloses:

**In Reference to Claim 56**

Dispensing unit for dispensing two fluid substances, comprising:

- a pump assembly having a first pump (24) and a second pump (19), which can be actuated by two common, manually operable operating means (34, 34f) so that they simultaneously dispense the two fluid substances, and

- a reservoir assembly for holding the two fluid substances (1a and 1b), the reservoir assembly comprising two reservoirs, which are each provided with an outlet at an outlet side (22 and 15) and are each delimited by a movable piston (11) on the side remote from the outlet, which pistons move towards the respective outlets during the dispensing of the fluid substances, characterized in that the reservoir assembly and the pump assembly are separate assemblies which [are] coupled to one another, in such a manner that in the uncoupled state each reservoir can be filled through the outlet of the reservoir, after which the pump assembly and the reservoir assembly are coupled to one another.

In Reference to Claim 58

Dispensing unit according to claim 56, wherein a first reservoir is delimited by an inner side of a first substantially cylindrical tube (See Fig. 1), the reservoir being delimited, on the side remote from the outlet side, by a continuous, substantially disk-like piston (11).

In Reference to Claim 59

Dispensing unit according to claim 56, wherein a second reservoir is delimited by the outer side of the first cylindrical tube and an inner side of a second substantially cylindrical tube (See Fig. 1), which surrounds the first cylindrical tube, the reservoir being delimited, on the other side from the outlet side, by a continuous, substantially annular piston (11).

In Reference to Claim 67

Dispensing unit according to claim 56, wherein the reservoir assembly comprises a cover (See 7 of Fig. 1) which closes off the reservoirs on the outlet side, the first (22) and second outlets (15) being arranged in the cover.

In Reference to Claim 68

Dispensing unit according to claim 67, wherein the cover is formed integrally with the second cylindrical tube (See Fig. 1).

In Reference to Claim 69

Dispensing unit according to claim 67, wherein the cover comprises a coupling rim (25) for coupling a pump assembly to it in order to form a dispensing unit.

In Reference to Claim 70

Dispensing unit according to claim 67, wherein the cover (7) [receives] a filling head for filling the first and second reservoirs. The cover has outlets 22 and 15.

15. Claims 56, 71, and 74 are rejected under U.S.C. 102(b) as being anticipated by US Patent No. 6,341,717 to Auer (Auer). Auer discloses:

In Reference to Claim 56

Dispensing unit for dispensing two fluid substances, comprising:

- a pump assembly having a first pump (12) and a second pump (12), which can be actuated by two common, manually operable operating means (7) so that they simultaneously dispense the two fluid substances, and
- a reservoir assembly for holding the two fluid substances (1 and 2), the reservoir assembly comprising two reservoirs, which are each provided with an outlet at an outlet side (10) and are each delimited by a movable piston (4) on the side remote from the outlet, which pistons move towards the respective outlets during the dispensing of the fluid substances, characterized in that the reservoir assembly and the pump assembly are separate assemblies which [are] coupled to one another, in such a manner that in the uncoupled state each reservoir can be filled through the outlet of the reservoir, after which the pump assembly and the reservoir assembly are coupled to one another.

In Reference to Claim 71

Dispensing unit according to claim 56, wherein the reservoir assembly further comprises a connecting element which connects the first and second cylindrical tubes to one

another in the vicinity of those ends of the first and second cylindrical tubes which are remote from the outlet side (Fig. 1).

In Reference to Claim 74

Dispensing unit according to claim [71] wherein the connecting element is connected to the first and/or second cylindrical tube by means of a click-fit connection (Fig. 1).

***Claim Rejections - 35 USC § 103***

16. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

17. Claim 57 is rejected under 35 U.S.C. 103(a) as being unpatentable over Davis in view of US Patent No. 5,237,797 to Varlet (Varlet).

In Reference to Claim 57

Davis discloses a dispensing unit according to claim 56 (See rejection of claim 56 above), but does not disclose that each piston prior to filling of the respective reservoir is located in a filling position close to the outlet. Varlet teaches that the filling position of a piston is close to the outlet (Fig. 22).

It would have been obvious to one having ordinary skill in the art at the time of the invention to have a filling position close to the outlet in order to prevent the ingress of air as taught by Varlet (abstract and col. 1, ln 19).

18. Claims 60-63 are rejected under 35 U.S.C. 103(a) as being unpatentable over Davis in view of WO 99/25627 to van der Heijden (van der Heijden).

In Reference to Claim 60

Davis discloses a dispensing unit according to claim 56, but does not disclose that the diameter or cross section of the first and/or second reservoir decreases in the direction of the outlet side over at least a section of the length of the reservoir. van der Heijden teaches a decreasing diameter in the direction of the outlet side (p. 4, ln 14-15, 20-22, and 25-27).

It would have been obvious to one having ordinary skill in the art at the time of the invention to have a decreasing diameter to avoid the adverse consequence of creep as taught by van der Heijden (p. 4, ln 17).

In Reference to Claim 61

Davis as modified by van der Heijden teaches a dispensing unit according to claim 60, wherein the diameter of the inner side of the first cylindrical tube decreases in the direction of the outlet side.

In Reference to Claim 62

Davis as modified by van der Heijden teaches a dispensing unit according to claim 60, wherein the distance between the outer side of the first cylindrical tube and the inner side of the second cylindrical tube decreases in the direction of the outlet side.

In Reference to Claim 63

Davis as modified by van der Heijden teaches a dispensing unit according to claim 60,

wherein the diameter of the inner side of the second cylindrical tube decreases in the direction of the outlet side, the outer side of the first cylindrical tube being straight.

***Allowable Subject Matter***

19. Claims 64-66 and 72-73 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims and if rewritten to overcome the rejections under 35 U.S.C. 112.

20. The following is an examiner's statement of reasons for allowance. For claims 64-66, the following was not found or fairly suggested by the prior art: a dispensing unit having an increasing diameter or cross section of the first and/or second reservoir in the direction of the outlet side so that in the vicinity of the outlet the diameter or cross section of each reservoir substantially corresponds to the diameter or cross section of its piston.

21. For claim 72, a connecting element that is integral with the first cylindrical tube was not found or fairly suggested by the prior art. For claim 73, a cover that connected to the first and/or second cylindrical tube by means of a click-fit connection was not found or fairly suggested by the prior art.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

***Conclusion***

22. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US Patent No. 4,773,562 to Gueret, US Patent No. 4,949,874 to Fiedler et al., and US Patent No. 4,438,871 have been included because they are generally representative of prior art dual reservoir dispensers.

23. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hyea Jung Choi whose telephone number is (571)270-5061. The examiner can normally be reached on Monday through Friday; 7:30 A.M. to 5:00 P.M. EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on (571) 272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/H. J. C./  
Examiner, Art Unit 3754

/Kevin P. Shaver/  
Supervisory Patent Examiner, Art Unit 3754